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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,542	12/30/2003	Rickey L. Fandel	70920-002	8565

29493 7590 04/05/2007  
HUSCH & EPPENBERGER, LLC  
190 CARONDELET PLAZA  
SUITE 600  
ST. LOUIS, MO 63105-3441

EXAMINER
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GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/748,542	FANDEL, RICKEY L.	
	<b>Examiner</b>	<b>Art Unit</b>	
	William V. Gilbert	3635	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 January 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2,4-9,11-14,16,17 and 19-24 is/are pending in the application.
- 4a) Of the above claim(s) 5,11,12,16,19 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4,6-9,13,14,17,20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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### DETAILED ACTION

This is a Final Office Action. Applicant cancelled Claims 3, 10, 15 and 18. Claims 5 and 16 are withdrawn from consideration. Further Claims 11, 12, 19 and 21 are not examined as being dependent from a cancelled claim. Claims 1, 2, 4, 6-9, 13, 14, 17, 20 and 22-24 are examined below.

### *Claim Objections*

1. Claim 23 is objected to because of the following informalities: Examiner suggests delete "milimeters", line 2, insert --millimeters--. Appropriate correction is required.

Claims 11, 12, 19 and 21 are objected to because of the following informalities: improper dependency from a cancelled claim. The claims therefore are not examined.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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Claims 1, 2, 4, 6-9, 13, 14, 17, 22 and 24 are rejected under 35 U.S.C. 102(b) as being anticipated by Voegeli (U.S. Patent No. 3,107,454).

Regarding Claims 1 and 13, Voegeli discloses a flashing receiver (Figure 1, element 13) of a thin gauge material having a first leg (Figure 2, element 22) and a second leg (17), a plurality of nail slots (Figure 1, element 12, per Claim 13) extending through the first and second legs, the first leg having a top and bottom forming a mounting face, the second leg (17) having first and second sides, and an intermediate member (Figure 1, area proximate 20) offsetting the first and second legs, and the intermediate member is resilient (an inherent feature, per Claim 13), and a J-shaped channel (Figure 2, element 24) in the second leg having an outer extension (18) substantially parallel to the first leg (22, per Claims 1 and 13). Per Claims 1 and 13, only the flashing receiver is claimed. The phrases "associated with a wall covering" and "associated with a removable flashing" are statements of intended use of the claimed invention and must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

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invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

Regarding Claims 2 and 14, the material is metal.

Regarding Claim 4, Voegeli discloses a plurality of nail openings (12) extending through at least the first leg (Figure 1) and proximate to the top.

Regarding Claims 6, the material of the intermediate member (20) of the prior art is rigid.

Regarding Claim 7, the material of the intermediate member (20) of the prior art is resilient.

Regarding Claims 8 and 17, a portion of the second leg (17) is at an angle to the first leg (22). See Figure 2 generally.

Regarding Claim 9, an intermediate portion (area proximate Figure 2, element 20) is at an angle to the first and second legs (16 and 17, respectively).

Regarding Claim 22, the outer extension (18) is at a lateral distance from the first leg (22) and at a preconfigured distance sufficient to protect roofing components underneath the J-shaped component.

Regarding Claim 24, the J-shaped channel (24) is sufficiently wide to receive a bottom of a siding panel. (See Figure 2, generally).

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**Claim 20** is rejected under 35 U.S.C. 102(b) as being anticipated by Lane (U.S. Patent No. 4,800,689).

Regarding Claim 20, Lane discloses a method of using an undersiding flashing receiver comprising locating the receiver (Figure 3, element 10) along a lower board (26) of a wall adjacent to a roof, the flashing receiver comprising a thin gauge material shaped to have a first and second leg (62, proximate 66 respectively), the first leg having a top and bottom extending longitudinally to form a mounting face, the second lag having a first and second side, the first side associated with a wall covering (Figure 4, element 48) and the second side is associated with a removable flashing (Figure 3, element 42), intermediate member (64) offsetting the first and second legs, a J-shaped channel (66) in the second leg, the J-shaped channel having an outer extension (proximate 66) substantially parallel to the first leg; securing the flashing receiver to the wall (20); inserting a flashing (42) into the undersiding flashing receiver, securing the flashing to the roof (18), at least partially covering the roof and flashing with roofing material (12), and connecting an exterior wall covering (48) to the flashing receiver.

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**Claim Rejections - 35 USC § 103**

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claim 23** is rejected under 35 U.S.C. 103(a) as being unpatentable over Lane.

Regarding Claim 23, Lane discloses the claimed invention except that the preconfigured distance is at least about 13 millimeters. It would have been obvious at the time the invention was made to a person having ordinary skill in the art

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as a matter of design choice because Applicant did not state a criticality for the necessity of this dimension and the prior art of record is capable of meeting the limitation.

#### ***Response to Arguments***

4. Applicant's arguments with respect to the claims have been considered but are moot in view of new ground(s) of rejection as a result of Applicant's amendment.

#### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Weckerly (U.S. Patent No. 3,256,650.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened

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statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Friedman can be reached on 571.272.6842. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

WVG *WM*  
*36 Mar 07*

  
Cari D. Friedman  
Supervisory Patent Examiner  
Group 3600